



PATENT  
Attorney Docket No.: MEDIV2010-4

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Epstein et al. Art Unit: 1636  
Application No.: 10/618,183 Examiner: R. Akhavan  
Filing Date: July 10, 2003 Confirmation No.: 4304  
Title: INJECTION OF BONE MARROW-DERIVED CELLS AND MEDIUM  
FOR ANGIOGENESIS

MAIL STOP AMENDMENT  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**TERMINAL DISCLAIMER**

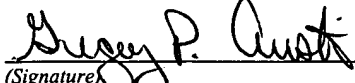
Sir:

The undersigned, attorney of record for Petitioner, MYOCARDIAL THERAPEUTICS, INC., with its place of business at 6350 Nancy Ridge Drive, Suite 103, San Diego, CA 92121, represents that Petitioner is the Assignee of 100 percent interest in Application Serial No. 10/618,183, filed July 10, 2003, entitled INJECTION OF BONE MARROW-DERIVED CELLS AND MEDIUM FOR ANGIOGENESIS as evidenced by the attached Assignment. The evidentiary documents referred to herein have been reviewed by the undersigned and it is certified that to the best of the undersigned's knowledge and belief, title is in the Assignee.

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CERTIFICATION UNDER 37 CFR §1.8	
I hereby certify that the documents referred to as enclosed herein are being deposited with the United States Postal Service with sufficient postage as first class mail on this date, September 20, 2004, in an envelope addressed to: MAIL STOP AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.	
Gregory P. Austin (Name of Person Mailing Paper)	
 (Signature)	September 20, 2004 (Date)

In re Application of:  
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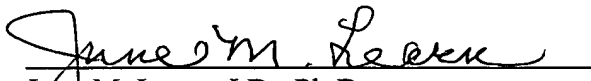
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Pursuant to 37 C.F.R. § 1.321(c), the undersigned, on behalf of Petitioner, MYOCARDIAL THERAPEUTICS, INC., disclaims the terminal part of any patent granted on the subject matter of the above-identified U.S. Patent Application Serial No. 10/618,183, filed July 10, 2003, that would extend beyond the expiration date of any patent that may be granted based on U. S. Patent Application No. 09/868,411. Petitioner hereby agrees that any patent so granted on the above-identified U.S. Patent Application Serial No. 10/618,183 shall be enforceable only for and during such period that the legal title to the subject matter of said patent shall be the same as the legal title to any application that may be granted on U. S. Patent Application No. 09/868,411, this Agreement to run with any patent granted on the above-identified application and to be binding upon the grantee, its successor or assigns.

Enclosed is Check No. 566699 in the amount of \$235.00 in payment of the Terminal Disclaimer fee (\$55.00) and the Information Disclosure Statement submission fee (\$180.00). The Commissioner is hereby authorized to charge any other fees that may be associated with this communication, or credit any overpayment, to Deposit Account No. 50-1355.

Respectfully submitted,

Date: September 20, 2004

  
June M. Learn, J.D., Ph.D.  
Registration No. 31,238  
Telephone: (858) 677-1416  
Facsimile: (858) 677-1465

GRAY CARY WARE & FREIDENRICH LLP  
4365 Executive Drive, Suite 1100  
San Diego, CA 92121-2133  
**USPTO CUSTOMER NO. 28213**

Attachment: 1. Copy of Assignment

ASSIGNMENT  
BY INVENTOR(S)

This assignment ("Assignment") is made by Stephen Epstein, of Rockville, Maryland, Shmuel Fuchs of Rockville, Maryland, Ran Kornowski of Ramat-Hasharon, Martin B. Leon, New York, New York 10021, and Kenneth W. Carpenter of La Jolla, California (collectively, the "Assignors") to Myocardial Therapeutics, Inc., a California corporation ("Assignee"), having a place of business at 6350 Nancy Ridge Drive, Suite 103, California 92121.

Recitals

A. Each of the Assignors has invented a new and useful invention entitled, **INJECTION OF BONE MARROW-DERIVED CELLS AND MEDIUM FOR ANGIOGENESIS**, for which an application for United States Letters Patent was filed on **July 10, 2003**, in the United States Patent and Trademark Office.

B. Each of the Assignors authorizes and requests insertion of the serial number of the application when officially known:

The United States Application Serial No.: 10/618,183.

C. Each of the Assignors believes the Assignors to be the original, first and joint inventors of the invention disclosed and/or claimed in the application for Letters Patent.

D. The parties desire to have a recordable instrument assigning from the Assignors to the Assignee the entire rights, title and interest in and to the invention, the application and all Letters Patent in the United States and throughout the world that may be granted or issued for the invention or that derive a right of priority from the application (including, without limitation, all

divisional, continuation, continuation-in-part and continued prosecution applications thereof, and all reissues and reexaminations thereof, and all foreign counterparts thereof) (collectively, the "Invention Patents").

Agreement

NOW, THEREFORE, in accordance with the obligations to assign the Invention Patents and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the Assignors agrees to the foregoing and as follows:

1. Each of the Assignors does and will sell, assign and transfer to Assignee, such Assignor's entire rights, title, and interest in and to each of the Invention Patents, including, without limitation, the rights to file foreign applications directly in the name of the Assignee and to claim for any such foreign applications any priority rights to which such applications are entitled under international conventions, treaties, or otherwise.

2. Each of the Assignors agrees that, upon request and without further compensation, but at no expense to such Assignor, such Assignor and such Assignor's legal representatives and assigns will do all lawful acts, including the execution of papers and the giving of testimony, that may be necessary or desirable for obtaining, sustaining, reissuing, or enforcing each of the Invention Patents in the United States and throughout the world, and for perfecting, recording, or maintaining the title of Assignee, and Assignee's successors and assigns, in and to each of the Invention Patents in the United States and throughout the world. In the event that Assignee is unable for any reason to secure any of the Assignors' signatures to any document that may be necessary or desirable for obtaining, sustaining, reissuing, or enforcing each of the Invention Patents in the United States and throughout the world, or for perfecting, recording, or maintaining the title of Assignee, and Assignee's successors and assigns, in and to each of the Invention Patents in the United States and throughout the world, each such Assignor hereby irrevocably designates and appoints Assignee and Assignee's duly authorized officers

and agents as such Assignor's agents and attorneys-in-fact to act for and on such Assignor's behalf and instead of such Assignor to execute such document, all with the same legal force and effect as if executed by such Assignor.


3. Each of the Assignors represents and warrants that such Assignor has not granted and will not grant to others either (1) any rights, title or interest in and to any of the Invention Patents, or (2) any rights inconsistent with the rights granted herein.

4. Each of the Assignors authorizes and requests the Commissioner for Patents of the United States and the various counterparts thereof throughout the world to issue and/or grant any Letters Patent granted for each of the Invention Patents to Assignee, its successors and assigns, as the assignee of the entire interest in such Invention Patents.

5. This Assignment constitutes the entire agreement with respect to its subject matter and supersedes all prior or contemporaneous oral or written agreements concerning such subject matter. No waiver, amendment, or modification of this Assignment shall be effective against the Assignee, unless in writing executed by a duly authorized representative of the Assignee. A breach of any of the promises or agreements contained herein will result in irreparable and continuing damage to Assignee for which there will be no adequate remedy at law, and Assignee shall be entitled to injunctive relief and/or a decree of specific performance, and such other relief as may be proper.

Assignor: Stephen Epstein

Date: 3/7/04

Signature: 

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ATTORNEY DOCKET NO.: MEDIV2010-4

Assignor: Shmuel Fuchs

Date: 3/8/04

Signature: 

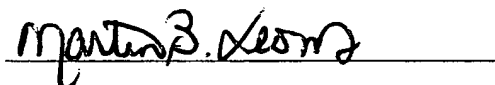
Assignor: Ran Kornowski

Date: 3/8/04

Signature: \_\_\_\_\_

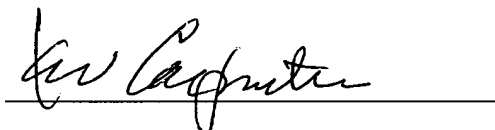
Assignor: Martin B. Leon

Date: 10/9/03

Signature: 

Assignor: Kenneth W. Carpenter

Date: 3/8/04

Signature: 

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ATTORNEY DOCKET NO.: MEDIV 0 10-4

Assignor: Shmuel Fuchs

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Assignor: Ran Komowski

Date: 0/3/04

Signature: Ran Komowski

Assignor: Martin B. Leon

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Assignor: Kenneth W. Carpenter

Date: \_\_\_\_\_

Signature: \_\_\_\_\_